

REMARKS

The applicants appreciate the Examiner's thorough examination of the application and request reexamination and reconsideration of the application in view of the preceding amendments and the following remarks.

The applicants present detailed arguments below regarding the allowability of the claims rejected by the Examiner.

Given the multiplicity of rejections and cited references, however, as a preliminary matter the applicants call to the Examiner's attention new claim 26, which includes an additional element which further distinguishes the applicants' claimed invention from each of the references cited by the Examiner in the pending Office Action.

New claim 26 recites a folding grooming table step system which includes, *inter alia*, a U-shaped rearward member vertically disposed upright at or about 90° to a supporting surface when said frame is unfolded. See e.g. the applicants' Fig. 4.

This claimed feature allows the claimed folding grooming table step system to be stand-alone and which can be used with standard pet grooming tables to be placed directly adjacent the table, for example, in place of hooks or other prior art measures. See e.g. the applicants' specification at page 2, lines 14-17; page 3 line 20 through page 4, line 2; page 7, lines 14-17; page 9, lines 13-15 and 20-23. Also compare e.g. applicants' Fig. 2 (prior art) and Fig. 4.

In sharp contrast, each of the cited references -- *Gibson et al.*, *Kain*, *Shrimpton*, *Knoke et al.*, *Joseph* and *Maloney et al.* -- teach the opposite. Each of these cited references teaches rearward members which are obliquely angled when unfolded and not vertically disposed upright as claimed. The cited reference *Lister* fails to disclose or teach a U-shaped rearward member at all, in contrast to the applicants' claim 26. Further, *Lister* teaches a stair step unit with steps

including feet 30 and foot support members 26, *inter alia*, for permanent placement adjacent mobile homes and the like, not a folding grooming table step system.

In addition, although *Lister* arguably teaches (vertical) corner posts 44 and 46, *Lister* teaches away from the applicants' claimed invention (and many of the other cited references) by teaching telescopically arranged members for adjusting the height of the system and the feet at the bottom of these posts. *Lister* states:

Vertical adjustable supports are provided under the bottom tread for engagement with the supporting surface therefor...

The corner posts on frames 40 and 42 are preferably of square tubular construction and *in the bottom of each foot member there is telescopically arranged* the square tubular *shank* 60 having a suitable enlarged foot pad 62. *Each corner post is vertically adjustable* by means of shank 60 and it will be appreciated that this may be provided for in numerous ways. As shown, shank 60 is provided with a plurality of vertically spaced openings 64 through which a key or pin 66 is inserted at any desirable point. By this arrangement, it will be appreciated that *each of the corner posts on frames 40 and 42 are individually vertically adjustable as may be required*.

See *Lister* at column 2, lines 22-24 and column 4, lines 14-25 (with emphasis added), as well as *Lister* Figs. 1 and 3.

In other words, by teaching this adjustment mechanism instead of a base member connecting the legs, *Lister* teaches away from such a base member as claimed by the applicant. A base member connecting the legs -- as claimed by the applicants -- would destroy a main function of *Lister*, namely the ability to adjust the height of the system from the bottom.

It is well established that "teaching away" by one reference is an important *indicium* of non-obviousness. See e.g. W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303, 311 (Fed. Cir. 1983) (in considering claims under §103, "the district court erred ... in considering claims in less than their entireties, i.e., in disregarding disclosures in the references that diverge

from and teach away from the invention at hand”) (with emphasis added).

In summary, none of the cited references disclose or teach the applicants’ claimed U-shaped rearward member vertically disposed upright at or about 90° to a supporting surface when said frame is unfolded. *Gibson et al.*, *Kain*, *Shrimpton*, *Knoke et al.*, *Joseph*, *Maloney et al.* do not teach a vertically disposed rearward member as claimed, and *Lister* teaches away from a U-shaped rearward member including two spaced legs connected by a base member.

Accordingly, new claim 26 is in condition for allowance for at least this reason.

With respect to the Examiner’s rejections, the Examiner rejects claims 1, 9, 14 and 24 under 35 U.S.C. §103(a) as being anticipated by U.S. Pat. No. 6,550,579 to *Gibson et al.* in view of U.S. Patent No. 5,762,163 to *Kain* and GB Patent No. 2322897 to *Shrimpton*. The Examiner also rejects claims 2-8 under 35 U.S.C. §103(a) as being unpatentable over *Gibson et al.* as modified by *Kain* and *Shrimpton* and further in view of U.S. Pat. No. 3,593,821 to *Lister*. The Examiner further rejects claims 10 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Gibson et al.* as modified by *Kain* and *Shrimpton* as applied to claim 1, and further in view of U.S. Pat. No. 4,440,264 to *Knoke et al.* The Examiner also rejects claim 11 as being unpatentable over *Gibson et al.* as modified by *Kain* and *Shrimpton* further in view of U.S. Pat. No. 5,577,574 to *Joseph*. The Examiner further rejects claim 12 as being unpatentable over *Gibson et al.* as modified by *Kain* and *Shrimpton*. The Examiner also rejects claim 13 under 35 U.S.C. §103(a) as being unpatentable over *Gibson et al.* as modified by *Kain* and *Shrimpton* as applied to claim 1, and further in view of U.S. Pat. No. 4,485,892 to *Maloney et al.*

Referring to applicants’ independent claims 1 and 24 the Examiner states in pertinent part, with emphasis added:

Gibson et al. discloses a folding step system comprising, a frame -- at 10, 12, including a U-shaped angled forward member -- at 14 and 24, forming two spaced apart legs -- at 24 and a connecting member -- see at the upper portions of 14 in figure 2 ...

In sharp contrast, the applicants claim a U-shaped angled forward member forming two spaced legs and a connecting base member.

In other words, *Gibson et al.* teaches a connecting member not at the base -- but instead at the top -- of the forward member 24, which is the exact opposite of the applicants' claims 1 and 24.

It is thus clear that *Gibson et al.* teaches away from the applicants' claims, especially in light of the fact that *Gibson et al.* discloses a connecting rearward base member between the elements 28, but fails to teach such a base member connecting the forward members 24. See for example the applicants' Fig. 4 compared to Fig. 1 of *Gibson et al.*

In addition, the Examiner cites *Kain* as disclosing an angled forward member and a connecting base member connecting two spaced legs.

These two cited references are not properly combinable. As noted above, *Gibson et al.* discloses a connecting rearward base member between the elements 28, but fails to teach such a base member connecting the forward members 24. Thus, it is clear that *Gibson et al.* deliberately left out a connecting base member between the forward members, and thus teaches away from such an element and thus teaches away from *Kain*. In light of *Gibson et al.*'s explicit and clear teachings, those of ordinary skill in the art would not be motivated to combine *Gibson et al.* and *Kain*. The tertiary reference *Shrimpton* does not show such connecting base members at all.

In further contrast to applicants' claims 1 and 24, neither *Gibson et al.*, *Kain*, nor *Shrimpton* disclose or teach connecting rods extending through elongated guide channels of the bracket members or that each elongated guide channel includes a detent which releasably locks the connecting rod with respect to the bracket members when the steps and the rearward member are

unfolded.

The Examiner admits that *Gibson et al.* does not disclose these elements -- and the applicants submit that neither does *Kain* -- but the Examiner states that *Shrimpton* discloses these elements.

In contrast to the applicants' claims 1 and 24, *Shrimpton*'s link member 80 ("bracket member" according to the Examiner) does not include any channel, much less an elongated guide channel through which the crossbar 70 extends. *Shrimpton*'s C-shaped latch member 60 is not a link member/"bracket" and *Shrimpton* itself draws a distinction between link elements 80, 90 and 100, and latch member 60.

Moreover, *Shrimpton*'s C-shaped latch member 60 is a far cry from an elongated guide channel, and it is separate from -- not included in -- the "bracket member" 80, in sharp contrast to the applicants' claims 1 and 24. All this would be understood by those skilled in the art (or otherwise). Thus, an interpretation of the applicant's claimed bracket with an elongated guide channel as equal to a C-shaped latch member is overly broad, because under the law the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. See MPEP §2111, citing In re Cortwright, 165 F.3d 1353, 1359, 49 USPQ 2d 1464, 1468 (Fed. Cir. 1999).

Thus, for at least the reasons above, applicants' claims 1 and 24 are not obvious over *Gibson et al.* in combination with *Kain* and/or *Shrimpton*. Accordingly, claims 1 and 24 are in condition for allowance for at least the foregoing reasons.

Claims 2-8, 9, 10, 11, 12, 13, 14 and 15 depend directly or indirectly from claim 1, and thus are in condition for allowance for at least the reasons above.

Moreover, as noted and discussed more fully above, *Lister* teaches away from the

.. applicants' claimed invention.

.. In addition, in order to reject claims 2-8 and 10, 11, 13 and 15 the Examiner cites no less than four references, one of which (*Lister*) is not a folding grooming table step system or a step stool, but is an adjustable stair step unit for permanent placement adjacent mobile homes. The applicants submit that combining four diverse references makes claims 2-8 non-obvious *per se*.

As Judge Learned Hand cogently stated:

All machines are made up of the same elements; rods, pawls, pitmans, journals, toggles, gears, cams, and the like, all acting their parts as they always do and always must. All compositions are made of the same substances, retaining their fixed chemical properties. But the elements are capable of an infinity of permutations and the selection of that group which proves serviceable to a given need may require a high degree of originality. It is that act of selection which is the invention ...

B.G. Corp. v. Walter Kidde & Co., 79 F.2d 20, 22, 26 USPQ 288 (2d Cir. 1935) (with emphasis added). From an infinity of permutations the applicants selected the group of elements which proved serviceable to the need for an improved step system, which are the applicants' invention of claims 2-8.

Accordingly, claims 2-8, 10, 11 and 15 are in condition for allowance for these additional reasons.

The Examiner also rejects claims 16, 18-19 and 25 under 35 U.S.C. §103(a) as being unpatentable over *Kain* in view of *Lister*. The Examiner further rejects claims 21 and 23 as being unpatentable over *Kain* in view of *Lister* and *Shrimpton*.

Lister teaches telescopically arranged members for adjusting the height of the system and the feet at the bottom of these posts. See e.g. *Lister* at column 4, lines 14-25. By teaching U-shaped tubes 22 and 24, *Kain* teaches away from *Lister* because U-shaped tubes would destroy

Lister's desired functionality. Conversely, *Kain* has no need for such telescoping or height adjustment because *Kain's* step stool is not for permanent placement. In summary, for at least these reasons those of ordinary skill in the art would not be motivated to combine these references. Moreover, *Shrimpton* fails to disclose the bracket members with elongated guide channels, as more fully discussed above in connection with claims 1 and 24.

Additionally, the Examiner is improperly combining a step stool with an adjustable stairstep unit for permanent placement adjacent mobile homes to reject the applicants' claims. These references teach different structures with different functions and purposes. Those of ordinary skill in the art would not be motivated to combine these references because of that, and because combining *Kain* with *Lister* would destroy the functionality of *Lister*. Further, *Kain* has no need for adjustable feet.

Accordingly, claim 16, 21 and 25, as well as claims 18-20 and 23 which depend directly or indirectly therefrom, are in condition for allowance.

CONCLUSION

Each of the Examiner's rejections has been addressed or traversed. Accordingly, it is respectfully submitted that the claims 1-16, 18-21 and 23-26 are in condition for allowance.

Early and favorable action is respectfully requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the

undersigned or his associates, collect in Waltham, Massachusetts, (781) 890-5678.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Thompson", written over a horizontal line.

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